

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Empowering Consumers to Prevent)	CG Docket No. 11-116
and Detect Billing for Unauthorized)	
Charges (“Cramming”))	
)	CG Docket No. 09-158
Consumer Information and Disclosure)	
)	CC Docket No. 98-170
Truth-in-Billing and Billing Format)	

**COMMENTS OF THE INDEPENDENT TELEPHONE &
TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone and Telecommunications Alliance (“ITTA”) hereby submits its comments in response to the April 27, 2012 *Report and Order and Further Notice of Proposed Rulemaking* (“*Order and FNPRM*”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceedings.¹

I. INTRODUCTION

In the *Order and FNPRM*, the FCC adopted rules to help consumers prevent and detect the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice commonly referred to as “cramming.”² At the same time, the Commission sought comment on the need for additional rules requiring carriers to obtain a consumer’s affirmative consent before placing third-party charges on their bills to consumers (so-called mandatory opt-

¹ *In the Matter of Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”); Consumer Information and Disclosure; Truth-in-Billing and Billing Format*, Notice of Proposed Rulemaking, CG Docket Nos. 11-116, 09-158, CC Docket No. 98-170 (rel. April 27, 2012).

² *Order and FNPRM* at ¶ 1.

in).³ ITTA agrees with the Commission's conclusion that consumers should be empowered to address unauthorized charges on their telephone bills and it endorses the rules established in the *Order and FNPRM*. ITTA maintains, however, that any additional anti-cramming rules are not necessary at this time, especially in light of the fact that the recently adopted rules have yet to take effect.

ITTA's members are mid-size telephone companies that provide a broad range of voice, data, and video services to approximately 20 million access lines in 44 states. In today's competitive environment, ITTA members and other voice providers have every incentive to protect subscribers from unauthorized charges and have measures in place to address cramming. ITTA member companies comply with the Commission's truth-in-billing guidelines,⁴ offer customers blocking options for third-party charges, work with customers to ensure that erroneous third-party charges are removed from their bills, and actively monitor the behavior of third-party vendors to eliminate bad actors. Given the increasingly crowded communications marketplace, where consumers are free to choose among a variety of services from any number of entities, it is imperative that voice providers have such policies and practices in place to ensure continued customer satisfaction and loyalty. The new anti-cramming rules reinforce and build upon the proactive policies and practices followed by ITTA members to provide adequate and effective regulation.

Further regulations should not be considered until the impact of the recently adopted rules is determined, especially considering the potentially burdensome and costly effects of the

³ *Order and FNPRM* at ¶ 4.

⁴ See 47 C.F.R. § 64.2401 (requiring that customer bills: (1) be clearly organized, clearly identify the service provider, and highlight any new provider that did not appear on the customer's bill during the previous billing cycle; (2) contain full and non-misleading descriptions of the charges appearing on the bill; and (3) contain clear and conspicuous disclosure of any information that the consumer may need to inquire about or dispute charges on the bill).

additional rules suggested in the *FNPRM*. Should the Commission decide to adopt the additional opt-in requirement proposed in the *FNPRM*, (which it should not), the additional rule should be applied only to non-telecommunications service charges to avoid interference with established and legitimate practices regarding telecommunications service charges. Further, the existing cramming rules and any new rules should be applied equally to all types of providers, including wireless and VoIP service providers.

II. THE COMMISSION SHOULD OBSERVE THE IMPACT OF ITS RECENTLY-ADOPTED RULES BEFORE CONSIDERING ADDITIONAL REQUIREMENTS

The bill formatting and transparency rules recently adopted by the Commission are a measured response to the detailed record in this proceeding. Although ITTA does not agree as a general matter that government-imposed regulations are the best way (or are necessary) to address concerns about cramming, the new rules represent a reasonable balance of consumer protections and the need of voice providers to respond flexibly based on market demands. ITTA acknowledges that the recently-adopted rules could provide benefits to customers; however, ITTA's support does not extend to further regulation at this time.

Service providers remain in the best position to determine the most effective methods for preventing cramming. A number of ITTA members have previously implemented the charge separation required by the new bill formatting rule on their own initiative because of its usefulness to subscribers in understanding their bills. Other voluntary measures, such as utilizing subscriber bill inserts to convey information, also have been explored by ITTA members to increase consumer awareness regarding cramming. ITTA appreciates the Commission's recognition of the fact "that many or most carriers already offer blocking and,

based upon the record, appear to notify consumers of blocking options.”⁵ These policies demonstrate that the industry is equipped to – and does – self-regulate in this area.

The current balance between the recently-adopted anti-cramming requirements and the proactive efforts of voice providers is appropriate. It maximizes the Commission’s interest in “appropriately balanc[ing] consumer convenience and protection”⁶ and “strik[es] an appropriate balance among the competing views reflected in the record.”⁷ The Commission should first determine whether the recently-adopted cramming rules, along with service providers’ voluntary practices, are sufficient to prevent cramming before contemplating the imposition of any additional requirements on service providers. The Commission risks over-regulation if additional rules are considered when existing rules may be sufficient.

The sufficiency of the recently-adopted rules cannot be determined without first being observed. Thus, the Commission should permit service providers a reasonable opportunity to implement the newly-adopted rules and it should allow a reasonable amount of time to elapse once those rules are implemented before taking up the question of whether additional regulations, including a mandatory opt-in rule, are necessary.

As a general matter, ITTA is a strong proponent of continued industry self-regulation in this area. That said, competitive considerations dictate that any requirements the Commission adopts in this proceeding be applied equally to all service providers, including CMRS and interconnected VoIP providers. The application of such requirements is consistent with the principles of regulatory parity by assigning various providers of similar services similar regulatory obligations. Moreover, parity would ensure that all consumers have access to the

⁵ *Order and FNPRM* at ¶ 8.

⁶ *Order and FNPRM* at ¶ 60.

⁷ *Order and FNPRM* at ¶ 78.

information required by the Commission as a result of this proceeding regardless of the underlying technology employed by their voice service provider.

III. ADDITIONAL REQUIREMENTS SUCH AS OPT-IN RULES WOULD BE UNREASONABLY BURDENSOME AND COSTLY

Wireline carriers are currently preparing to implement the exacting requirements of the recently-adopted cramming rules, while continuing their ongoing efforts to manage the significant expenses associated with issuing subscriber bills and administering their relationships with customers. As ITTA previously has expressed, any additional rules that require disclosure of certain information to subscribers and dictate the manner in which such information is disclosed would necessarily require further substantial changes to wireline providers' business practices and operations.⁸ Such changes could have far-reaching and costly impacts on the day-to-day commercial activities of wireline providers and their interaction with customers.

Should the Commission adopt a mandatory opt-in process, specific additional expenses related to the training of in-house customer service personnel and the processing of customer information, the hiring of third-party verification service companies to contact embedded customer bases, and/or the preparation, mailing and processing of customers' letters of authorization likely would need to be incurred by service providers. Additionally, the need to educate existing customers could be extensive and additional customer service representatives might need to be hired and/or trained regarding how to instruct subscribers on the opt-in process.

In short, before the Commission adopts a mandatory opt-in requirement (which ITTA opposes) the direct and indirect costs to service providers of implementation and administration need to be carefully considered. A full and fair examination of the extensive initial and ongoing

⁸ See Comments of the Independent Telephone and Telecommunications Alliance, CG Docket Nos. 11-116, 09-170 (filed Oct. 24, 2011), at 3.

costs to service providers of a mandatory opt-in rule, particularly in light of the lack of record evidence that the recently-adopted cramming rules are not sufficient to curb cramming, dictate that the Commission refrain from adopting an opt-in requirement at this time.

Should the Commission nevertheless move forward and adopt an opt-in requirement in this docket, it must ensure that service providers have the flexibility to continue to participate in established third-party arrangements for the billing of legitimate telecommunications service charges such as directory assistance, collect calls, and inmate facilities calls. In each of these cases, customer acceptance of the charge is obtained when the cost is incurred, and should not be addressed by cramming rules. A preemptive opt-out of all third-party charges could affect a customer's ability to receive desired calls and the ability of service providers to legitimately bill for those calls. The Commission should not limit voice providers' ability to respond to consumers and the market flexibly and efficiently through the adoption of regulations which severely impact providers' ability to enter into valid and socially-beneficial business relationships.⁹

IV. CONCLUSION

The recently-adopted cramming rules should effectively achieve the Commission's goals. These rules should be permitted to take effect and their impact over a reasonable period of time carefully considered before the Commission takes up the adoption of additional regulations. However, to the extent that the Commission decides to impose additional cramming rules on service providers at this time, it must ensure that such rules are applied in a competitively neutral

⁹ In addition, ITTA strongly opposes the suggestion in the *FNPRM* (*Order and FNPRM* at ¶ 143) that service providers be required to disclose a customer's opt-in status on each bill as a reminder. Message space on customer invoices is precious and a recurring requirement would significantly impede other business needs for that very limited space.

manner and that they allow service providers reasonable flexibility and discretion with respect to their implementation.

Respectfully submitted,

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